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IN THE

Supreme Court of the United States

..... Term, 195 ....

No. 490

COLUMBIA AUTO LOAN, INC., trading as COLUMBIA CREDIT COMPANY, a body corporate, by and through its President, Samson Dewey Gottlieb,
Petitioner,

vs.

DISTRICT OF COLUMBIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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vs.

DISTRICT OF COLUMBIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable, the Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States:

Columbia Auto Loan, Inc., trading as Columbia Credit Company, a body corporate, prays that a writ of certiorari be issued to review judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled cause on the 8th day of November, 1951.

STATEMENT OF THE MATTER INVOLVED

The matter involved in this criminal conviction of the petitioner arises as follows:

The petitioner is a corporation engaged in lending money in the District of Columbia at 6% interest or less, and made two loans secured by automobiles at 6% interest. Petitioner agreed with the borrowers to secure insurance for the borrowers' protection and for the protection of the petitioner, as loss payee.

As a result of this transaction, petitioner was charged with violation of the Small Loan Act, alleging that the loans were made to the borrowers at a rate in excess of 6%, without a license so to do. In order to convict petitioner, the District insisted that the premiums collected for the policies securing the loans were, in fact, interest and thus elevated the interest on the loans to exceed 6%.

To sustain this conviction, it was asserted by the District and found by the courts below that the policies to secure the loans, issued by the American Title & Insurance Company, an insurance company licensed in the District of Columbia, were invalid because they were issued by a policy-writing agent who had not been approved or disapproved by the Superintendent of Insurance as a policy-writing agent for the American Title & Insurance Company, although a licensed policy-writing agent for another insurance company in the District of Columbia, and thus the premiums collected on such invalid policies were interest on the loans exceeding the statutory amount.

JURISDICTION

The judgment was entered on November 8, 1951. Jurisdiction of this Court is invoked under 28 U. S. Code, Section 1254 (1).

OPINIONS BELOW

The decision of Municipal Court of the District of Columbia, holding a Criminal Division, is unreported as it filed no opinion. Its decision appears at R. 6.

The opinion of the Municipal Court of Appeals was rendered February 26, 1951, and is reported at 78 A 2d 857, and appears in Appendix 1 herein.

STATUTES INVOLVED

TITLE 26-601—D. C. Code, 1940 Edition.

> "It shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than six per centum per annum is charged on any security of any kind, direct or collateral, tangible or intangible, without procuring a license; and all persons, firms, voluntary associations, joint-stock companies, incorporated societies, and corporations engaged in said business shall pay a license tax of five hundred dollars per annum to the District of Columbia."

TITLE 26-607—D. C. Code, 1940 Edition.

> "Any violation of this chapter shall be punished by a fine of not less than twenty-five dollars and not greater than two hundred dollars, or by imprisonment in the jail or workhouse of the District of Columbia for not less than five nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. The said commissioners shall cause the corporation counsel to institute criminal proceedings for the enforcement of this chapter before any court of competent jurisdiction."

TITLE 35-1334—D. C. Code, 1940 Edition.

> "Any policy-writing agent or salaried employee authorized by any company to solicit, negotiate, bind, write, or issue policies or applications therefor shall,

in any controversy between the insured or his representative and the said company, be held to be the agent of the company which issued or effected the policy solicited or so appplied for, anything in the application or policy to the contrary notwithstanding."

TITLE 35-1336—D. C. Code, 1940 Edition (Relative Parts.)

"Any person hereafter desiring to engage in business in the District as a policy-writing agent, soliciting agent, broker, or salaried company employee, as defined by this chapter, shall, before engaging in such business, secure from the Superintendent a license authorizing him to engage in such business. The person to whom the license may be issued shall file sworn answers to such interrogatories as the Superintendent may require on forms furnished by the Superintendent. Before the Superintendent shall issue a license to any policy-writing agent, soliciting agent, or salaried company employee, he shall require the company or policy-writing agent desiring the appointment of such person to certify—

"(a) That the person to be appointed, if not a salaried company employee, is a resident of this District, or that his principal office for the conduct of such business is in or will be maintained in the District;

"(b) That he is personally known to the person making the certification;

"(c) That he has had experience or instructions necessary to the proper conduct of the kind or kinds of business to which the license is to extend;

"(d) That he has a good business reputation, is trust-worthy, and is worthy of a license."

TITLE 35-1334—D. C. Code, 1940 Edition.

"Any payment made by or on behalf of the insured to any broker for policies issued to such broker for delivery to the insured or issued directly to the insured on the order of such broker, shall, in controversies between the insured and the company, be deemed to have been paid to the company."

QUESTIONS PRESENTED

The District of Columbia, appellee in the Court of Appeals, there stated the question presented as follows:

> "The question presented is whether, in the prosecution of an unlicensed money lender for violating the Loan Shark Law by charging interest at a rate in excess of six per cent per annum on loans of money made by it, the Municipal Court erred in holding to be interest amounts charged borrowers by such lender for premiums on insurance to be furnished borrowers by such lender when no insurance in fact was provided by it."

This raises the sole question: Whether or not insurance in fact was provided for the borrower. The conviction of the accused depended upon whether or not valid insurance was issued for which a premium was collected from the borrower.

The attack on the validity of the insurance raises the following questions:

> (a) Are contracts of insurance valid when issued by an insurance company licensed to do business in the District of Columbia through an agent as attorney-in-fact, with full knowledge of the insurance company of the manner and means by which the policies were issued?
>
> (d) Does the Superintendent of Insurance have to affirmatively recognize an agent selected by an insurance company licensed in the District of Columbia to give protection to the insured on an insurance policy issued by such agent?
>
> (c) Does an antedated insurance policy issued protect the insured from the agreed date?

SPECIFICATION OF ERRORS

1. The Court below erred in holding that the insurance policies were invalid.

2. The Court below erred in holding that the Superintendent of Insurance must affirmatively approve the designation of the policy-writing agent in order that the insurance policies issued be legal, and protect the insured.

3. The Court below erred in holding that an insurance policy can not be antedated.

4. The Court below erred in holding that insurance premiums collected by a lending agency to be paid or obligated to be paid by it to an insurance company, or its agent, are interest.

REASONS FOR GRANTING THE WRIT

1. The decisions of the courts below that the insurance policies issued by a licensed insurance broker in the District of Columbia, as an authorized agent of an insurance company licensed and doing business in the District of Columbia, are illegal and do not protect the insured because the policy-writing agent had not been approved or disapproved by the Superintendent of Insurance as an agent of the American Title & Insurance Company, are in conflict with Title 35, Section 1334, of the D. C. Code of 1940, 54 Stat., 1077, providing in effect that any policy-writing agent authorized by the company to write or issue policies shall be held to be the agent of the company, "anything to the contrary notwithstanding."

2. The decision that insurance policies issued by the duly authorized agent of an insurance company, licensed and doing business in the District of Columbia, are invalid because the policy-writing agent, although duly li-

censed in the District of Columbia, had not been approved or disapproved by the Superintendent of Insurance as an agent of the particular company, is in conflict with the applicable decisions of this Court.

3. The decision of the Court of Appeals for the District of Columbia that a policy issued to protect the insured after the cancellation of a former policy for the insured's protection, to run from the date of the former policy, is not enforceable from its agreed date, conflicts with the decisions of this Court, the Circuit Court of Appeals of the Eighth Circuit and with the general law as determined by the decisions of the state courts.

BRIEF IN SUPPORT OF PETITION

STATEMENT OF CASE

The American Title & Insurance Company, licensed to do business in the District of Columbia (R. 92), designated one Patchen (R. 93), a licensed insurance (R. 56) broker in the District of Columbia as its policy-writing agent. With the knowledge and consent of the American Title & Insurance Company, Gottlieb countersigned policies in the name of the principal, William O. Patchen, by use of a rubber stamp showing the facsimile of his signature. This rubber stamp was affixed by Gottlieb, president of the petitioner, acting under a power of attorney from Patchen (R. 94). The insurance company, with full knowledge of this procedure, notified the Superintendent of Insurance that it had designated the Patchen Agency to represent it. (R. 93). This designation was neither affirmatively approved or disapproved by the Superintendent of Insurance. (R. 58). Between July 19, 1950 and August 11, 1950, the policies in question were issued in the manner and means and under the instructions and upon the forms supplied by the insurance company and in accordance with the agreement between the petitioner and the assured. (R. 94). The

petitioner engaged in lending money in the District of Columbia at an interest thereon of 6% per annum or less and made loans to Reed and Bunn, charging interest at the rate of 6%, and were authorized by the borrowers to subscribe for insurance and pay premiums monthly for policies which secured them as owners and the petitioner as loss payee. (R. 121 & R. 30). The premiums collected on these policies the courts below found to be interest on the loans. The finding was based on two propositions:

> 1. That insurance thus written was invalid because issued by an agent unapproved by the Superintendent of Insurance of the District of Columbia; and,
>
> 2. That one policy which was substituted for a policy in another company, which was cancelled, was antedated and that, therefore, there was no policy of insurance in effect at the date of the loan.

The Trial Court made no findings of fact and gave no written opinion, but found the petitioner guilty of violating the loan statute by charging more than 6% per annum on the two loans made.

The United States Court of Appeals affirmed the judgment on the opinion of the Judge of the Municipal Court of Appeals.

The finding of guilt of the petitioner by the Municipal Court of Appeals was based upon two propositions: (1) That the insurance was invalid; and (2) that there was no insurance by virtue of the antedating one of the policy. As to this, the Municipal Court of Appeals for the District of Columbia said, p. 6:

> "(1) We think it clear that if no legal insurance is obtained on the automobile by the lending agency and a contract is executed under which a charge is exacted which would make the total more than 6% on the amount loaned even though part of the charge

is called an 'insurance premium,' then the charge becomes one for the use or detention of money. This is interest and is unlawful if it exceeds the legal rate."

"(2) However, in view of the date sequence mentioned above, we think there is substantial evidence in the record to support the view that when the loans were made there was no insurance at all with any insurance company on the automobiles involved in the present case. Therefore, at most defendant contracted with borrowers to make charges on its own account for such so-called 'insurance' as a part of the charge for lending money."

It is thus demonstrated that the finding that there was no valid insurance provided by the petitioner protecting the beneficiaries was the basis of the petitioner's conviction.

ARGUMENT

I.

Valid Insurance Protecting the Beneficiaries Was Secured by the Petitioner. The Decision to the Contrary Conflicts With the Statutes, the Decisions of This Court and General Law.

It can not be questioned that insurance may be required as a further security for the payment of a loan under loan statutes similar to the District of Columbia. *State v. Bankers Finance Corporation*, 26 A 2d 220; *Auto Owners Finance Company v. Coleman*, 89 N. H. 356, 199A, 365.

This leaves for consideration the sole question of the validity of the insurance secured by the petitioner. The decisions below that the policies are invalid conflicts with Title 35, Section 1334, D. C. Code of 1940, which provides as follows:

> "Any policy-writing agent or salaried employee authorized by any company to solicit, negotiate, bind, write, or issue policies or applications therefor shall, in any controversy between the insured or his representative and the said company, be held to be the agent of the company which issued or effected the policy solicited or so applied for, anything in the application or policy to the contrary notwithstanding."

These policies were issued by the Patchen Agency in the manner and means and upon the forms furnished by the American Title & Insurance Company, who held out Patchen as its agent. (R. 93-94). The validity of the policies issued, with full knowledge of the American Title & Insurance Company to protect the automobile owners in this case, is supported by another provision in Title 35, Section 1334, of the District of Columbia Code of 1940, as follows:

> "Any payment made by or on behalf of the insured to any broker for policies issued to such broker for delivery to the insured or issued directly to the insured on the order of such broker, shall, in controversies between the insured and the company, be deemed to have been paid to the company."

The findings below that the policies were invalid were based on the fact that Patchen, although a licensed insurance broker in the District of Columbia, had not been approved as a policy-writing agent of the American Title & Insurance Company.

The general law is that contracts of an unlicensed insurance company and contracts by unlicensed agents of a licensed company protect the insured and are valid.

In *Coverdill* v. *Northern Insurance Co.*, 243 Michigan, 395, 220 N. W., 758, it was held:

> "Insurers have been held not entitled to evade liability on policies upon the ground that their solicitors or agents were unlicensed."

In *Roane* v. *Union Pacific Life Insurance Co.*, 135 Pac. 892, it held:

> "Contracts of an unlicensed insurance company were valid" and the Court held in substance:
> "Parties who obtain policies are not subject to any penalty and this will not declare that policies issued or contracts made by such companies before they receive certificates from the Commissioner of Insurance are invalid. It is the duty of the company to comply with the state law before doing any kind of insurance business in the state. Both reason and the weight of authority are to the effect that where a corporation has entered into a contract in excess of its granted powers and has received the fruits or benefits of the contract and an action is brought against it to enforce the contract, it is estopped to set up the defense that it had no power to make it."

Again in *Millers Indemnity Underwriters* v. *Patten*, 285, S. W., 240, it was held that an insurance company could not evade liability on a policy issued by it by showing that it had not taken out a license to do business as required by statute. This was upon the theory that the insurance company could not take advantage of its own wrong.

Not only does the decision that the policy issued by the American Title & Insurance Company, through Patchen, its designated agent, did not protect the insured conflict with the above statutes, but it is in conflict with the applicable decision of this Court in *Insurance Company* v. *McCain*, 96 U. S. 84, where it is specifically held that an insurance company can not hold out a person as its agent and then disavow responsibility for his acts.

II.

Antedating One Policy Did Not Invalidate It

The Municipal Court of Appeals, by virtue of the fact that after the cancellation of the insurance in another company, the policy thereafter issued by the American Title & Insurance Company antedated to the date of the original policy, held

> "that when the loans were made there was no insurance at all in any insurance company on the automobiles involved in the present case. Therefore, at most defendant contracted with borrowers to make charges on its own account for such so-called 'insurance' as a part of the charge for lending money."

The assured was protected by an original policy, and after its cancellation, for the borrower and its own protection the petitioner secured a policy in the American Title & Insurance Company antedated to the date of the original policy. This did not invalidate the protection. The holding to the contrary conflicts with the decisions of this Court and of the Circuit Court of Appeals of the Eighth Circuit.

The original insurance was cancelled without fault of the petitioner, and the subsequent policy in the American Title & Insurance Company with the same coverage dated back to the original coverage. The insured and the petitioner were covered by the original policy and were thus at all times protected. It is well settled that insurance policies can be antedated or postdated, and in the absence of fraud, the company is bound by the contract of its agents.

It must be remembered that no attack has been made upon the validity of these policies by the American Title & Insurance Company. The attack comes wholly from the District of Columbia, whose duty it would seem to be to protect the insured. Certainly if loss had occurred under

these policies, and the parties secured had sought to enforce the policies, the American Title & Insurance Company could not have evaded liability by any contention that the policies were illegal because Patchen had not been approved as a policy-writing agent for the company by the Superintendent of Insurance for the District of Columbia.

The decision that there was no insurance at the time of the loan is in conflict with the rule as stated in *Whitney* v. *Union Central Life Insurance Company*, 47 F. 2d, 861:

> "That the effective date of an insurance contract may be antedated to cover the period which no risk is assumed by the insurer is without question. There was no reason why parties cannot agree that a policy may be antedated, and that the policy shall take effect from said date agreed upon, if the policy of insurance is a voluntary contract. Nearly any kind of an agreement that is not contrary to public policy or law may be included therein. The insurer may impose such conditions as it desires, and the insured can take them or go without the policy, as it may choose."

The risk in a policy or contract of insurance attaches as of the time actually agreed upon or understood by the parties. It is competent for the parties to an insurance policy to agree that it shall be antedated and thereupon it takes effect by relation from the agreed date. Whether the risk begins from a past date depends upon the terms of the contract, and such a provision will be given effect in the absence of anything contrary. *Mutual Life Insurance Company* v. *Hurin Baking Co.*, 263 U. S., 167; *Mutual Insurance Company* v. *Folsom*, 18 Wall, 237; *Commercial Mutual Insurance Co.* v. *Union Mutual Co.*, 19 Howard, 318.

In *United States* v. *Patryas*, 303 U. S. 340, 345, this Court considered the validity of an insurance policy writ-

ten after the risks had already attached and in upholding its validity used this significant language:

> "No legal obstacle prevents parties, if they so desire, from entering into contracts of insurance to protect against loss that may possibly have already occurred. Marine insurance and antedated fire insurance policies frequently afford protection against risks which, unknown to the parties, have already attached."

The Municipal Court of Appeals, in its opinion, refers to but does not make a particular point of the fact that the policies of insurance were executed by Gottlieb as attorney-in-fact for Patchen under a general power of attorney. The method and means of executing these policies were set up by the American Title & Insurance Company and well known to it. The company furnished the forms and instructions as to how these policies should be written and specifically authorized all insurance emanating from the petitioner's business be written in this manner. The insurance company can not now be heard to complain, and, therefore, the Di: ict of Columbia should not complain.

If this is an attack upon the validity of the policy, it is fully answered by this Court in *Relief Fire Ins. Co., etc.* v. *Shaw*, 94 U. S. 574, 579. This Court there considered a case where it was contended that no completed contract was ever made and

> "that there was no evidence that the agent ever had authority to make other than a written contract, or that a completed oral contract was ever made as stated in the declaration, or that the insurance company ever authorized its agent to delegate to another the power to make insurance."

In sustaining the validity of the policy, the Court said of the agent;

"His mode of doing business was not materially different from that of other agents or companies. He had, during all that period, been assisted by a clerk or clerks, who attended to the business in his absence,—which the company must have known. These and other facts, sufficiently shown by the evidence, entirely justify the charge of the court, and the finding of the jury is conclusive."

III.

Premiums Collected on Valid Policies Can Not Be Interest on the Loan

Patchen of the Patchen Agency, who was the designated policy-writing agent of the American Title & Insurance Company, was ill at the time of the transaction and operated through an attorney-in-fact. Before the case came to trial, Patchen was dead and no qualification had been had upon his estate. The petitioner, therefore, in collecting the premiums on these policies could not and had not settled at the time of trial since there had been no qualification on Patchen's estate. The petitioner at all times recognized its indebtedness to the agent of the insurance company, or to someone who was qualified to receive it, and, in any event, was obligated for the amount collected. The charge made for premiums on valid insurance was not interest on the loan, but it was the cost of a new security. *Auto Owners Finance Company* v. *Coleman,* supra.

Title 35, Section 1334, of the D. C. Code of 1940, specifically provides that if this were a controversy between the insured and the company, the premiums would be deemed to have been paid to the company. Therefore, the premiums collected by the peitioner due the Patchen Agency, or to the American Title & Insurance Company, are a debt of the petitioner and can not be converted into interest on the loan.

CONCLUSION

The force and effect of these statutory provisions enacted by the Congress of the United States as to the validity of insurance policies raises an important question which has not directly been determined by this Court and should be settled, especially since the decision is palpably in conflict with the applicable decisions of this Court, other circuit courts of appeal and the general law as construed by the various state courts.

Wherefore, it is respectfully urged that the writ of certiorari be granted.

Respectfully submitted,

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APPENDIX I

THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 995

COLUMBIA AUTO LOAN, INC., T/A COLUMBIA CREDIT COMPANY, a body corporate by and through its president SAMSON DEWEY GOTTLIEB, APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.

Appeal from The Municipal Court for the District of Columbia, Criminal Division.

(Argued January 7, 1951 Decided February 26, 1951)

Samuel F. Beach, with whom *Leslie C. Garnett* and *Bernard Margolius* were on the brief, for appellant.

Chester H. Gray, Principal Assistant Corporation Counsel, with whom *Vernon E. West*, Corporation Counsel, *Milton D. Korman*, Assistant Corporation Counsel, and *Clark F. King*, Assistant Corporation Counsel, were on the brief for appellee. *Edward A. Beard* also entered an appearance for appellee.

Before CAYTON, Chief Judge, and HOOD and CLAGETT, Associate Judges.

CLAGETT, *Associate Judge*: Columbia Auto Loan, Inc., trading as Columbia Credit Company, through its president, Samuel Dewey Gottlieb, was convicted and fined under Code 1940, 26-601, which makes it unlawful "to engage in the District of Columbia in the business of

loaning money upon which a rate of interest greater than sir per centum per annum is charged on any security of any kind, direct or collateral, tangible or intangible, without procuring license." It was stipulated that defendant was engaged in the business of lending money and also that it was not licensed under the so-called Small Loan Act, under which rates higher than 6% may be charged. Therefore the principal issue both in the trial court and here was whether defendant charged borrowers more than 6% interest.

Involved in the original information were three specific loans on used automobiles, but, for reasons not germane to this appeal, one of the cases was eliminated. Of the remaining cases one involved a loan to Peter Bunn of $150. This loan was made May 26, 1950. As evidence of this indebtedness Bunn was required to deliver to defendant his promissory note secured by a chattel deed of trust in the amount of $250, payable in 10 installments of $25 each. The other case involved an alleged loan to Joshua Reed made May 27, 1950, in the amount of $198.28.[1] As evidence of this indebtedness, Reed was required to deliver to defendant his promissory note secured by a chattel deed of trust in the amount of $300, payable in 10 installments of $30 each. The notes in both cases were written to include interest until paid, but the rate of such interest was left blank. The chattel deeds of trust securing the notes contained provisions that upon default of any installment (which included insurance charges) the entire amount of the notes (including the insurance premiums) would become due. Since such monthly payments, including the repayment of principal, obviously would equal more than 6% per annum on the amount loaned, the issue was narrowed to whether

[1] Testimony as to the amount loaned to Reed differed. For the purpose of this discussion, we accept the company's own figures.

and to what extent such payments included legal, or indeed any, charges for insurance.

Defendant's ordinary method of doing business as described by its president Gottlieb was as follows: When a person applied to it for an automobile loan ($150 in the Bunn case) and the loan was to be repaid in 10 months, the company took the sum necessary to repay the principal and interest in 10 months ($150 principal plus $3.75 interest in the Bunn case)[2] and added thereto a sum representing "insurance" premiums for one year ($96.25 in the Bunn case), the total representing the face amount of the note and the chattel mortgage which the borrower was required to sign ($250 in the Bunn case). The total was divided by the number of months in which the loan was to be repaid (10 in the Bunn case), and thus the monthly payment ($25 in the Bunn case) was arrived at. The "insurance" was supposed to cover one year's premium on the actual cash value of the automobile, $25 deductible, including fire and theft, towing charges and collision. In the Bunn case, for example, at the time of obtaining the loan of $150, he was required to sign, in addition to the note and chattel deed of trust, a "loan and insurance application" authorizing Columbia Auto Loan, Inc., to cover the automobile with such insurance "as it may deem necessary," and also authorizing the company "to make payment covering the premium on any such insurance to such insurance agency or company that you [the company] may choose or make payments thereon on a monthly basis."[3]

The so-called insurance in these cases was claimed by the company to have been based upon an agreement be-

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[2] Actually, the interest charge was figured on a 3% discount basis. Had it been figured on a "straight" 6% per annum interest basis, the interest charge for 10 months would have been $4.15.

[3] Reed testified he was told he had no insurance. Bunn testified he had gotten no policy until about a month before the trial.

tween one Patchen, said to have recently left the employ of defendant company, and the American Title and Insurance Company, making Patchen a "policy-writing" agent of the insurance company. Under this agreement the agent Patchen would have the right to countersign automobile policies sent in advance and to "adjust" losses arising under policies. This agreement is referred to more fully below.

Fundamental to consideration of the present case were certain significant dates and also provisions of our Code relating to insurance agents. In addition to being licensed as insurance agents generally, certain "policy-writing agents" are authorized to be specially licensed for that purpose by the Superintendent of Insurance under Code 1940, 35-1336, which also provides that the Superintendent shall first find that the agent is "competent and trustworthy" and that not more than 25% of his commission income from business to which the license applies will result from policies, the premium on which are paid or are to be paid in the manner set forth in paragraph (f) of section 35-1340. This subsection prescribes that such a license of a policy-writing agent may be revoked by the Superintendent if he finds that the license "is being used primarily for the purpose of obtaining commissions on policies on which he, on his own account, pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member."

It is noteworthy that Code 1940, 35-1334, provides that no insurance contract of this nature shall be written unless it is countersigned by a person specially licensed for this purpose.

Previous to the dates mentioned in the present case, the Columbia Auto Loan, Inc., as agent had written automobile insurance through other companies. For example, Gottlieb, testifying regarding a previous arrangement his company had with another insurance company, said that the insurance company sent the defendant company, as agent, a bill for the premiums due every month, defendant company carried such accounts as bills payable, and then, exclusive of losses, "We got back 88% of what we paid in the previous month." Asked whether the securer of the loan got the benefit of such repayment of premiums, Gottlieb answered, "No". However, on the initiative of the Superintendent of Insurance, such policy-writing agency or agencies with defendant were cancelled and were not in effect on the date of the transactions here involved. In consequence of the cancellation of the other previous arrangements, the following new arrangement was made: Patchen, operating as the Patchen Insurance Agency, became sick in March 1950 and never operated personally after that time. He applied for a license as a policy-writing agent for the American Title and Insurance Company. On July 15, 1950, Patchen (who died in August 1950), then in a hospital in Philadelphia, executed a general power of attorney in favor of Gottlieb. On July 20, 1950, armed with such power of attorney, Gottlieb, using Patchen's name, executed "an agency agreement" authorizing Patchen to act as policy-writing agent for American Title and Insurance Company, acting through the American Plan Corporation. The agency agreement was specifically made subject to the laws of the District. It contained no provision making it retroactive. Since it was actually executed by Gottlieb, he knew that it contained a provision that it was subject to District laws. This agency agreement, although not executed until July 1950, was dated as of May 31, 1950. Patchen's alleged agency agreement with American Title and Insurance Company, thus signed through Gottlieb,

was never approved by the Superintendent of Insurance. The Superintendent, without whose authorization the agency was illegal, was not even notified of its execution until July 21, 1950. Gottlieb obtained a rubber stamp purporting to represent Patchen's signature, and this rubber stamp was used by the employees of defendant company to countersign ostensible policies of insurance on automobiles with American Title and Insurance Company, although neither Patchen nor Gottlieb was licensed as a policy-writing agent. For example, such an ostensible policy with American Title and Insurance Company was written in the name of Reed, one of the borrowers in the present case. The Bunn policy was not put in evidence, but it obviously could not have been issued before July. The Reed policy, although purporting to cover the automobile with insurance from May 27, 1950, the date of the loan, to May 27, 1951, was countersigned in Patchen's name by the rubber stamp on July 29, 1950. It will be remembered that the so-called agency agreement with Patchen, although not actually made until July, did not even purport to be effective before May 31, 1950. Gottlieb testified that defendant company owed either to the insurance company or to the Patchen estate money on account of the premiums, but, even if this were true, defendant company retained the use of the so-called premium money and at the time of trial had not paid it. On this testimony the trial court held that defendant had engaged in the business of lending money upon which a rate of interest higher than 6% was charged on security.

The argument in the trial court revolved largely around the question of whether, on the theory of estoppel, the American Title and Insurance Company would be liable on policies written when Patchen's alleged policy-writing agency had not been approved by the Superintendent of Insurance and particularly when Patchen's name was signed by Gottlieb's employees with a rubber stamp. That

issue, however, is involved in one or more suits in the District Court of the United States for the District of Columbia and, as we see it, is not before us. However, in view of the date sequence mentioned above, we think there is substantial evidence in the record to support the view that when the loans were made there was no insurance at all with any insurance company on the automobiles involved in the present case. Therefore, at most defendant contracted with borrowers to make charges on its own account for such so-called "insurance" as a part of the charge for lending money.

"Interest" has been defined as the consideration paid for the use of money or for forbearance in demanding it when due. *Penn Mutual Life Ins. Co.* v. *Commissioner of Internal Revenue*, 3 Cir., 92 F. 2d 962. Within a usury statute, "interest" has been defined as money payable for use of capital on loan of money, forbearance of debt, or penalty imposed for retention of money. *Foley* v. *Flaherty*, 278 Mass. 134, 179 N. E. 599.[4]

We think it clear that if no legal insurance is obtained on the automobile by the lending agency and a contract is executed under which a charge is exacted which would make the total more than 6% on the amount loaned even though part of the charge is called an "insurance premium," then the charge becomes one for the use or detention of money. This is interest and is unlawful if it exceeds the legal rate.[5]

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[4] See *Pacific Mutual Life Ins. Co. of California* v. *Goss*, 5 Cir., 99 F. 2d 658; *Maryland Casualty Co.* v. *Omaha Electric L. & P. Co.*, 8 Cir., 157 Fed. 514; *Eastern Mortgage & Securities Co.* v. *Collins*, Tex. Civ. App., 118 S. W. 2d 479; 66 C. J., Usury, § 109.

[5] *Missouri, K. & T. Trust Co.* v. *Krumseig*, 172 U. S. 351; In re Graham, D. C. W. D. Ky., 22 F. Supp. 233; Anno. 21 A. L. R. 797, 878, et seq.; 66 C. J., Usury § 170. See *Dickey* v. *Bank of Clarksdale*, 183 Miss. 748, 184 So. 314; *State* v. *Bankers Finance Corp.*, 2 Terry 566, 26 A. 2d 220.

A further argument made by defendant is that since two specific transactions only were proved this was not sufficient, within the meaning of the statute, to establish that the company was engaging in the business of loaning money upon which a rate of interest greater than 6% per annum was charged. It has been held single isolated acts do not constitute engaging in business.[6] Here, however, it was stipulated that defendant was engaged in the business of lending money and also that it was not licensed under the so-called Small Loan Act under which licensed individuals or companies are permitted to charge up to 1% per month on the actual amount of loans of less than $200.[7] How many times must a company break the law before it can be prosecuted? It was in evidence that defendant had written 137 "policies" under the Patchen arrangement before Patchen's death in August 1950. Under the circumstances we believe that two actual cases were enough. In view of the stipulations made and the proof of two overt acts of charges of more than 6%, we believe that the trial court was justified in its conclusion that defendant was, beyond a reasonable doubt, engaged without a license in the prohibited business.

Affirmed.

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[6] *Hartman* v. *Lubar*, 77 U. S. App. D. C. 95, footnote 2, 133 F. 2d 44, cert. denied 319 U. S. 767. See *Knott* v. *Jackson*, D. C. Mun. App., 31 A. 2d 662, 71 W. L. R. 6.

[7] Code 1940, 26-605.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 490

COLUMBIA AUTO LOAN, INC., trading as COLUMBIA CREDIT COMPANY, a body corporate, by and through its President, SAMSON DEWEY GOTTLIEB, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit rendered November 8, 1951, has not been reported. It appears at R. 125.

The opinion of the Municipal Court of Appeals for the District of Columbia is reported in 78 A. 2d 857.

The opinion of the Municipal Court for the District of Columbia has not been reported. It appears at R. 8.

STATUTES INVOLVED

The statutes involved are set forth in the appendix to this brief.

SUMMARY OF ARGUMENT

This case does not present any of the questions upon which this Court ordinarily grants a writ of certiorari.

The matter involved arose under Acts of Congress applicable solely to the District of Columbia and does not involve any question of general importance.

Petitioner stipulated that it was engaged in the business of lending money and that it had no license to charge interest at a rate in excess of six per cent. The sole issue to be tried was whether petitioner charged interest at a rate in excess of six per cent. The Municipal Court of Appeals in its opinion analyzed the elaborate procedures by which petitioner purported to issue and charge borrowers for so-called insurance and clearly demonstrated that such "insurance" was worthless. On the narrow issue presented, the Municipal Court of Appeals properly applied decisions of this Court relating to usury, rather than insurance. By affirming the judgment of that Court on the opinion of the late Judge Clagett, the United States Court of Appeals affirmed its reasoning and application of the law.

ARGUMENT

The Petition Should Be Denied

The petitioner was convicted of violation of the Loan Shark Law of the District of Columbia (R. 2, 9; Resp. App. 1). The sole question presented was whether petitioner was making loans at a rate of interest in excess of six per cent (R. 123; Pet. App. 18). Determination of that question depended on the validity, under an Act regulating the business of insurance in the District of Columbia known as the Fire and Casualty Act, of purported policies of insurance for which petitioner required borrowers to pay so-called premiums. When such so-called premiums were added to amounts acknowledged by petitioner to be interest, the rate far exceeded legal interest (R. 38, 44). In its opinion the

Municipal Court of Appeals for the District of Columbia clearly demonstrated that under the applicable Fire and Casualty Act (Resp. App. 1-7)

> "* * * there was no insurance at all with any insurance company on the automobiles involved in the present case"

and held that such so-called premiums were part of petitioner's charge for lending money (Pet. App. 23).

Both the Loan Shark Law and the Fire and Casualty Act are Acts of Congress applicable only in the District of Columbia. This Court has held that it

> "* * * will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited or which declare the common law of the District. * * *"
>
> *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285, 80 L. Ed. 229, 56 S. Ct. 190; *District of Columbia* v. *Pace*, 320 U. S. 698, 88 L. Ed. 408, 64 S. Ct. 406.

Rule 38, paragraph 5 (c) of the Revised Rules of this Court indicates the nature of the reasons for which a review on a writ of certiorari will be granted. Applying those reasons to the instant case, it seems clear that a writ should not issue in this case. There is no question of general importance. The decision of this Court in this case would not constitute a precedent of general application. There is in this case no question of substance relating to the construction or application of the Constitution, or a treaty.

Respecting petitioner's contention that the decision of the United States Court of Appeals is in conflict with decisions of this Court (Pet. Br. 7) it must be remembered that, under the stipulations made by petitioner (R. 123), the only element of the offense to be proved was that petitioner had charged interest in excess of six per cent per annum. With

the issue so narrowed, the Municipal Court of Appeals properly applied the theory of applicable decisions of this Court relating to usury, rather than to insurance which it held did not exist. Among the applicable decisions of this Court was that in *Scott* v. *Lloyd*, 34 U. S. (9 Pet.) 418, 9 L. Ed. 178, 188, 189, in which Mr. Chief Justice Marshall, speaking for the Court, said:

> "The ingenuity of lenders has devised many contrivances, by which, under forms sanctioned by law, the statute may be evaded. * * * If an express stipulation for the repayment of the sum advanced be indispensable to the existence of usury, he must be a bungler indeed, who frames his contract on such terms as to expose himself to the penalties of the law."

In the later case of *Missouri, Kansas & Texas Trust Company* v. *Krumseig*, 172 U. S. 351, 356, 43 L. Ed. 474, 19 S. Ct. 179, relied upon by the Municipal Court of Appeals, this Court said:

> "* * * it does not, in general, comport with a negotiation for a loan of money that anything should enter into the views of the parties, but money, or those substitutes which, from their approximation to money, circulate with corresponding, if not equal, facility. Still, however, like every other case, it is open to explanation, and *the question always is whether it was or was not a subterfuge to evade the laws against usury.* The books contain many cases where artful contrivances have been resorted to, whereby the lender is to receive some other advantage or thing of value beyond the repayment of the loan with legal interest. Sometimes the agreement has taken the form of the purchase of an annuity. *More frequently there is a collateral agreement whereby the borrower is to purchase an article of property and to pay therefor more than its intrinsic value.* It has been frequently held that to constitute usury, where the

> contract is fair on its face, there must be an intention knowingly to contract for or to take usurious interest, but mere ignorance of the law will not protect a party from the penalties of usury. *Lloyd* v. *Scott*, 4 Pet. 205 [7:833]." (Emphasis supplied.)

Here there was such a "collateral agreement whereby the borrower is to purchase an article of property and to pay therefor more than its intrinsic value". Both Reed and Bunn, the borrowers in this case, were charged by petitioner for non-existent "insurance" in addition to "interest".

By affirming the judgment of the Municipal Court of Appeals on the opinion of the late Judge Clagett (R. 125) the United States Court of Appeals for the District of Columbia Circuit approved the reasoning and application of the law set forth in that opinion.

CONCLUSION

It is submitted that the petition for writ of certiorari should be denied.

Respectfully,

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INDEX TO RESPONDENT'S APPENDIX

Statutes Involved

Loan Shark Act, approved February 4, 1913, 37 Stat. 657; Sections 26-601 et seq., D. C. Code 1940: 1
Sec. 26-601 1
Sec. 26-605 1
Fire and Casualty Act, approved October 9, 1940, 54 Stat. 1063; Sections 35-1301 et seq., D. C. Code 1940: 2
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STATUTES INVOLVED

Loan Shark Act, approved February 4, 1913, 37 Stat. 657, (Sections 26-601 et seq., D. C. Code 1940):

"§26-601.

"It shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than six per centum per annum is charged on any security of any kind, direct or collateral, tangible or intangible, without procuring license; * * *"

"§26-605.

"No such person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall charge or receive a greater rate of interest upon any loan made by him or it than one per centum per month on the actual amount of the loan, and this charge shall cover all fees, expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security. The foregoing interest shall not be deducted from the principal of loan when same is made. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation making such business shall furnish the borrower a written, typewritten, or printed statement at the time the loan is made, showing, in English, in clear, distinct terms, the amount of the loan, the date when loaned and when due, the person to whom the loan is made, the name of the lender, the amount of interest charged, and the lender shall give the borrower a plain and complete receipt for all payments made on account of the loan at the time such payments are made. No such loan greater than two hundred dollars shall be made to any one person: *Provided*, That any person contracting, directly or indirectly, for, or receiving a greater rate of interest than that fixed in this chapter, shall forfeit all interest so contracted for or received; and in addition thereto shall forfeit to the borrower a sum of

money, to be deducted from the amount due for principal, equal to one-fourth of the principal sum: *And provided further*, That any person in the employ of the Government who shall loan money in violation of the provisions of this chapter shall forfeit his office or position, and be removed from the same."

Fire and Casualty Act, Approved October 9, 1940, 54 Stat. 1063 (Sections 35-1301 et seq., D. C. Code 1940):

"§35-1303. Definitions.

* * *

" 'Policy writing agent' means any person who is not a salaried employee of a company, and whose residence or principal place of business is located in the District, and who is authorized in writing by any company authorized to transact business in the District to countersign policies and to solicit, negotiate, or effect contracts of insurance, surety, or indemnity for such company in the District.

" 'Soliciting agent' means any person who is not a salaried employee of a company and whose residence or principal place of business is located in the District, and who is authorized by a company having authority to transact business in the District, or by a policy-writing agent, to solicit in the District contracts of insurance, surety, or indemnity in behalf of such company or agent.

" 'Broker' means any person who for a consideration acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance, surety, or indemnity.

* * *"

"§35-1314.

"Any company authorized to do business in the District may, when empowered by its charter, make all or any one or more of the kinds of insurance and reinsurance comprised in either or both of the following classes, subject to and in accordance with the provisions of this chapter:

"(1) *Fire and marine.*—On houses, buildings, and all other kinds of property against loss, damage, or damages by fire, lightning, or storm; to insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers or water pipes; and to make all kinds of insurance against loss of or damage to goods, merchandise, or other property caused by fire, risks of transportation, or navigation, the action of the elements or adverse manifestations of nature, as well as all and every risk or peril to which the subject of insurance may be exposed, against which it is not contrary to public policy to insure, including every insurable interest therein or in the use thereof, or profit or income therefrom, or legal liability therefor, but not to include injury to the person nor loss caused by breach of trust.

* * *"

"§35-1334.

"No company authorized to do business in the District shall, by its representatives or otherwise, make, write, issue, or deliver any contract of insurance, surety, or indemnity, except life, title, and ocean marine insurance, on any person, property, business activity, or insurable interest within the District except through regularly constituted policy writing agents or authorized salaried employees licensed in the District as provided in this chapter.

"No such contract covering persons, property, business activities, or insurable interests in the District, except contracts of life, title, and ocean marine insurance, shall be written, issued, or delivered by any authorized company or by any of its representatives unless such contract is duly countersigned in writing by a person who is licensed as provided in this chapter to countersign such contracts, and no salaried officer, manager, or other salaried employee of any authorized company, unless he be licensed as provided in this chapter, shall write, issue, or countersign any such contract.

"No company, agent, or salaried company employee shall make any agreement as to a policy other than that which is plainly expressed in the policy issued.

"No company, agent, salaried company employee, or broker shall pay or offer to pay or allow as an inducement to any person to insure any rebate of premium or any special favor or advantage whatever in the dividends to accrue thereon, or any inducement whatever not specified in the policy.

"Every company authorized by this chapter to do business in the District shall file annually with the superintendent on or before the 15th day of April, and at such other times as they may be appointed, a list of agents and salaried employees of said company who are authorized to solicit, write, effect, issue, or deliver policies for such company in the District, except that the names of soliciting agents may be filed either by the company or by the policy-writing agent.

"Any policy-writing agent or salaried company employee authorized by any company to solicit, negotiate, bind, write, or issue policies or applications therefor shall, in any controversy between the insured or his representative and the said company, be held to be the agent of the company which issued or effected the policy solicited or so applied for, anything in the application or policy to the contrary notwithstanding.

"Any payment made by or on behalf of the insured to any broker for policies issued to such broker for delivery to the insured or issued directly to the insured on the order of such broker, shall, in controversies between the insured and the company, be deemed to have been paid to the company.

"No soliciting agent shall have any authority to countersign any policy."

"§35-1336.

"Any person hereafter desiring to engage in business in the District as a policy-writing agent,

soliciting agent, broker, or salaried company employee, as defined by this chapter, shall, before engaging in such business, secure from the Superintendent a license authorizing him to engage in such business. * * * Before the Superintendent shall issue a license to any policy-writing agent, soliciting agent, or salaried company employee, he shall require the company or policy-writing agent desiring the appointment of such person to certify—

(a) That the person to be appointed, if not a salaried company employee, is a resident of this District, or that his principal office for the conduct of such business is in or will be maintained in the District;

(b) That he is personally known to the person making the certification;

(c) That he has had experience or instructions necessary to the proper conduct of the kind or kinds of business to which the license is to extend;

(d) That he has a good business reputation, is trustworthy, and is worthy of a license.

"* * * Before the Superintendent shall issue a license to any policy-writing agent, soliciting agent, salaried company employee, or resident broker, he shall personally, or through his deputy or any person regularly employed in the department, within a reasonable time, and in a designated place within the District, subject each such person to a personal written examination relating to such person's knowledge of the kind or kinds of business to which the license may extend and his competency to act as such policy-writing agent, soliciting agent, broker, or salaried company employee. * * * Following such examination the Superintendent shall isue such license as may be applied for when he is satisfied that the person to be licensed is (a) competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for, and that not more than 25 per centum of his commission income from business to which the license applies will result from policies the premiums on which are paid or are to be paid in the

manner set forth in paragraph (f) of section 35-1340; and (b) that he has a good business reputation and has had experience, training, or education, or is otherwise qualified in the line or lines of business in which the license would entitle him to engage, and, except in the case of a nonresident broker or salaried company employee, is a resident of the District, or maintains his principal office for the conduct of such business in the District; and (c) is reasonably familiar with the insurance laws of the District, and with the provisions, terms, and conditions of the policies he is proposing to solicit, negotiate, or effect, and is worthy of a license. * * *

"Licenses may be issued in the names of individuals, or in the names of firms, partnerships, or corporations, including banks, trust companies, real-estate offices, and building and loan associations: *Provided*, That on such licenses there shall be listed the name of every member or officer of such firm, partnership, or corporation who solicits insurance or who countersigns policies: *And provided further*, That such named persons shall be subject to all requirements of this chapter * * *"

"§35-1338.

"In the event of the death or disability of any person licensed as a policy-writing agent, soliciting agent, or salaried company employee, the Superintendant may transfer such license to another person without the payment of an additional fee, and may renew such license: *Provided, however*, That no person shall act as policy-writing agent, soliciting agent, or salaried company employee under any transferred license or renewal thereof for a period in excess of six consecutive months."

"§35-1341.

"It shall be unlawful for any person, without conforming to the provisions of this chapter, directly or indirectly to represent himself as having authority to solicit, negotiate, effect, procure, receive, or forward directly or indirectly any policy or renewal thereof, or to attempt to effect insur-

ance, surety, or indemnity contracts covering any person or insurable interest in the District, or to countersign any policy or renewal thereof."

"§35-1507.

"(d) No company, agent, or broker shall fail to furnish to an insured any policy or comparable evidence of insurance to which the insured is entitled."